

Introduced by Senator Lowenthal

February 27, 2009

An act to add Section 25250.29 to the Health and Safety Code, and to amend Sections 48623, 48624, 48662, and 48673 of, and to add Section 48620.2 to, the Public Resources Code, relating to oil.

LEGISLATIVE COUNSEL'S DIGEST

SB 546, as introduced, Lowenthal. Used oil.

(1) The California Oil Recycling Enhancement Act requires the California Integrated Waste Management Board to adopt a used oil recycling program that promotes and develops alternatives to the illegal disposal of used oil, and requires the program to include, among other things, a reporting, monitoring, and enforcement program to ensure that all laws relating to used oil are properly carried out. The act defines terms for its purposes, including "used oil hauler" and "used oil recycling facility." The act requires the board to certify or recertify a used oil recycling facility for which the board has received an inspection report, unless the board determines that the facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment. If the board denies certification, it is authorized to subsequently certify a facility if it determines that the facility meets the standards for certification. Existing law requires a used oil recycling facility to report to the board for each quarter the amount of used oil received and the amount of recycled oil produced. A violation of the act is a crime.

This bill would revise the certification requirements to also require the board to certify or recertify a used oil recycling facility that is an out-of-state facility and for which the board has received a report from the Department of Toxic Substances Control that the out-of-state facility

has demonstrated that the facility substantially meets specified federal requirements related to the management of used oil and recycles used lubricating oil to meet specified purity standards for recycled oil. The bill would require an out-of-state facility, as a condition of demonstrating that compliance, to enter into an agreement with the department to pay the department's full expenses for conducting related review and inspection costs. The bill would require an out-of-state facility that seeks certification to annually certify, in writing to the board and under penalty of perjury, that the facility substantially meets those specified federal requirements, thereby imposing a state-mandated local program by creating a new crime. The bill would revise the quarterly reporting requirement to require a used oil recycling facility issued a specified permit to produce recycled oil and an out-of-state used oil recycling facility that is certified by the board to report to the board for each quarter the amount of used oil received and the amount of recycled oil produced.

The bill would revise the definitions of "used oil hauler" and "used oil recycling facility" to conform to those changes, and would define "rerefined oil" for purposes of the act.

(2) Existing law generally regulates persons who generate, receive, store, transfer, transport, treat, or recycle used oil. A violation of those requirements is a crime.

This bill would generally require used oil to be tested and analyzed by a laboratory accredited by the State Department of Public Health, to ensure that it meets specified criteria, before a load of used oil is shipped to a transfer facility, recycling facility, or facility located out of the state. The bill would require the testing and analysis to be accomplished by a registered hazardous waste transporter before acceptance at a transfer or recycling facility or shipment out of state, except as otherwise specified. The bill would require the person performing the test to maintain records of the test for at least 3 years and provide that the person is subject to audit and verification by the Department of Toxic Substances Control. The bill would require the registered hazardous waste transporter who is listed as the transporter on the Uniform Hazardous Waste Manifest used to ship used oil out of state to submit a report annually to the department containing information regarding shipment of used oil out of state. Because a violation of the used oil requirements would be a crime, the bill would impose a state-mandate local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25250.29 is added to the Health and
2 Safety Code, to read:

3 25250.29. (a) Except as provided in paragraph (2) of
4 subdivision (b) and subdivision (g), before a load of used oil is
5 shipped to a transfer facility, recycling facility, or facility located
6 out of the state, the used oil shall be tested and analyzed by a
7 laboratory accredited by the State Department of Public Health
8 pursuant to Article 3 (commencing with Section 100825) of
9 Chapter 4 of Part 1 of Division 101, to ensure that the used oil
10 meets all of the following characteristics:

11 (1) A flashpoint above 100 degrees Fahrenheit.

12 (2) A polychlorinated biphenyls (PCB) concentration of less
13 than 5 ppm.

14 (3) A concentration of total halogens of 1000 ppm or less, unless
15 the presumption in subclause (I) of clause (v) of subparagraph (C)
16 of paragraph (1) of subdivision (a) of Section 25250.1 has been
17 rebutted pursuant to subclause (II) of clause (v) of subparagraph
18 (C) of paragraph (1) of subdivision (a) of Section 25250.1.

19 (b) The testing and analysis required pursuant to subdivision
20 (a) shall be accomplished by a registered hazardous waste
21 transporter prior to acceptance at a transfer facility or recycling
22 facility, or shipment out of the state, except the transporter is not
23 required to perform the testing and analysis if the transporter can
24 do either of the following:

25 (1) (A) Demonstrate that testing and analysis has been performed
26 by the generator of the used oil prior to shipment.

27 (B) Subparagraph (A) does not require the generator of the used
28 oil to perform the testing and analysis required by this section.

(2) Provide documentation that the testing will be performed by a transfer facility or a recycling facility issued a permit by the department pursuant to this chapter.

(c) (1) A transporter shall not require a used oil collection center to test tanks or containers that contain only used lubricating oil or oil filters accepted from the public as a condition of accepting the oil for shipment.

(2) A transporter shall not require a generator to test used oil as a condition of accepting that used oil for shipment.

(3) This subdivision does not alter a generator's responsibility to comply with regulations adopted by the department that govern the operation of a generator.

(d) This section does not affect or limit a testing requirement that the department may impose on a used oil transfer facility or used oil recycling facility as a condition of a permit issued by the department, including, but not limited to, a test required pursuant to a facility's waste analysis plan.

(e) The person performing a test required by subdivision (a) shall maintain records of tests performed for used oil for at least three years and is subject to audit and verification by the department.

(f) The registered hazardous waste transporter who is listed as the transporter on the Uniform Hazardous Waste Manifest used to ship used oil out of state shall submit a report, on or before March 1 of each year, to the department, containing all of the following information for the preceding year:

(1) Total volume of used oil shipped out of state.

(2) Date of each shipment of used oil out of state.

(3) Uniform Hazardous Waste Manifest tracking number used to ship used oil out of the state.

(4) Volume of used oil shipped out of state listed on each manifest.

(5) Information pertaining to the out-of-state facility to which the used oil was shipped, including the facility name, facility address, and facility EPA ID number.

(6) Signed certification that all used oil shipped out of the state was analyzed and conformed to the requirements of subdivision (a), including identification of the accredited laboratory utilized to test and analyze the used oil shipment.

(7) Any other information that the department may require.

(g) (1) This section does not apply to a load for shipment that consists exclusively of used lubricating oil accepted by a used oil collection center from the public, including, but not limited to, used lubricating oil accepted by a publicly funded certified or uncertified used oil collection center located in a small rural county.

(2) This section does not require a generator to test used oil for dielectric oil derived from highly refined mineral oil used in oil filled electrical equipment. Nothing in this section exempts that oil from any testing requirement required by any other law.

(3) This section does not prohibit the transportation of used oil to a facility located outside the state, or impose liability other than compliance with the requirements of this section upon, or in another way affect the liability of, a generator whose used oil is transported to a facility located outside the state.

SEC. 2. Section 48620.2 is added to the Public Resources Code, to read:

48620.2. “Rerefined oil” means a lubricant base stock or oil base that has been derived from used oil and meets all the following criteria:

(a) Processed using a series of mechanical or chemical methods, or both, including, but not limited to, vacuum distillation, followed by solvent refining or hydrotreating.

(b) Capable of meeting the Physical and Compositional Properties, in addition to the Contaminants and Toxicological Properties, as defined under the American Society for Testing and Materials (ASTM) D6074-99 standard.

(c) Processed into a material that has a quality level suitable for use in a finished lubricant.

SEC. 3. Section 48623 of the Public Resources Code is amended to read:

48623. “Used oil hauler” means a hazardous waste ~~hauler~~ *transporter* registered pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code who transports used oil to a used oil recycling facility certified pursuant to Article 7 (commencing with Section 48660), to a used oil storage facility, *or* to a used oil transfer facility, ~~or to an out-of-state recycling facility registered with the Environmental Protection Agency and operated in substantial compliance with applicable regulatory standards of the state in which the recycling facility is located.~~

SEC. 4. Section 48624 of the Public Resources Code is amended to read:

48624. “Used oil recycling facility” means a facility ~~which is issued a hazardous waste facilities permit or grant of interim status by the department pursuant to Section 25200 or 25200.5 of the Health and Safety Code to convert used oil into recycled oil that produces recycled oil, as defined in Section 25250.1 of the Health and Safety Code, and is eligible for certification pursuant to Section 48662.~~

SEC. 5. Section 48662 of the Public Resources Code is amended to read:

48662. (a) The board shall certify or recertify ~~any a~~ used oil recycling facility ~~for which the board has received a report from the department pursuant to Section 48661, unless the board determines that the facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment. If the board denies certification, the board may subsequently certify a facility if it determines that the facility meets the standards for certification.~~ that meets either of the following requirements:

(1) *The used oil recycling facility is located in this state and the board has received a report from the department pursuant to Section 48661, unless the board determines that the facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment.*

(2) *The used oil recycling facility is an out-of-state facility and the board receives a report from the department that the out-of-state facility has demonstrated to the satisfaction of the department that the facility substantially meets the requirements in Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations and recycles used lubricating oil to meet the purity standards for recycled oil, as specified in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 of the Health and Safety Code.*

(b) *If the board denies certification to a facility subject to this section, the board may subsequently certify the facility if it determines that the facility meets the standards for certification.*

(c) *An out-of-state facility that seeks certification shall annually certify, in writing to the board, under penalty of perjury, that the*

1 *facility substantially meets the requirements in Part 279*
2 *(commencing with Section 279.1) of Title 40 of the Code of Federal*
3 *Regulations.*

4 *(d) Paragraphs (1) and (2) of subdivision (a) do not require the*
5 *department to inspect or prohibit the department from inspecting*
6 *an out-of-state facility to determine whether the department is*
7 *satisfied that the facility substantially meets the requirements in*
8 *Part 279 (commencing with Section 279.1) of Title 40 of the Code*
9 *of Federal Regulations and recycles used lubricating oil to meet*
10 *the purity standards for recycled oil, as specified in subparagraph*
11 *(B) of paragraph (3) of subdivision (a) of Section 25250.1 of the*
12 *Health and Safety Code for recycled oil.*

13 *(e) As a condition of demonstrating compliance pursuant to*
14 *subdivision (a), a facility shall enter into an agreement with the*
15 *department pursuant to Section 25201.9 of the Health and Safety*
16 *Code to pay the department's full expenses for conducting the*
17 *review and any inspection costs the department may incur in*
18 *determining whether the facility substantially meets the*
19 *requirements in Part 279 (commencing with Section 279.1) of Title*
20 *40 of the Code of Federal Regulations and whether the facility*
21 *recycles used oil to meet the purity standards for recycled oil, as*
22 *specified in subparagraph (B) of paragraph (3) of subdivision (a)*
23 *of Section 25250.1 of the Health and Safety Code.*

24 SEC. 6. Section 48673 of the Public Resources Code is
25 amended to read:

26 ~~48673. Beginning July 1, 1992, every~~ *(a) On and after*
27 *January 1, 2010, a used oil recycling facility issued a permit by*
28 *the department to produce recycled oil, as defined in Section*
29 *25250.1 of the Health and Safety Code, and an out-of-state used*
30 *oil recycling facility that is certified by the board pursuant to*
31 *Section 48662, shall report to the board for each quarter the amount*
32 *of used oil received and the amount of recycled oil produced. The*

33 *(b) A facility subject to this section shall provide estimates,*
34 *where feasible, of the amount*~~which~~ *that is used lubricating oil*
35 *and the amount*~~which~~ *that is used industrial oil. The*

36 *(c) The reports required by this section shall be submitted on*
37 *or before the last day of the month following each quarter, in the*
38 *form and manner*~~which~~ *that the board may prescribe.*

39 SEC. 7. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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